

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TQP DEVELOPMENT, LLC

Plaintiff,

v.

BARCLAYS PLC, *et al.*,

Defendants.

Civil Action 2:09-cv-00088-TJW

Jury Trial Demanded

**AMAZON.COM'S ANSWER AND COUNTERCLAIM TO TQP'S
ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Amazon.com, Inc. ("Amazon.com") files this Answer and Counterclaim to Plaintiff TQP Development, LLC's ("TQP") Original Complaint For Patent Infringement ("Complaint"). Amazon.com denies the allegations and characterizations in TQP's Complaint unless expressly admitted in the following paragraphs:

1. Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 1 and therefore denies the same.
2. Paragraph 2 does not require a response by Amazon.com. To the extent that Paragraph 2 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 2 and therefore denies the same.
3. Paragraph 3 does not require a response by Amazon.com. To the extent that Paragraph 3 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 3 and therefore denies the same.

4. Paragraph 4 does not require a response by Amazon.com. To the extent that Paragraph 4 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 4 and therefore denies the same.

5. Paragraph 5 does not require a response by Amazon.com. To the extent that Paragraph 5 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 5 and therefore denies the same.

6. Paragraph 6 does not require a response by Amazon.com. To the extent that Paragraph 6 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 6 and therefore denies the same.

7. Paragraph 7 does not require a response by Amazon.com. To the extent that Paragraph 7 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 7 and therefore denies the same.

8. Paragraph 8 does not require a response by Amazon.com. To the extent that Paragraph 8 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 8 and therefore denies the same.

9. Paragraph 9 does not require a response by Amazon.com. To the extent that Paragraph 9 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 9 and therefore denies the same.

10. Paragraph 10 does not require a response by Amazon.com. To the extent that Paragraph 10 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 10 and therefore denies the same.

11. Amazon.com denies it is a Washington corporation. Amazon.com admits its principal place of business is at 1200 12th Ave. South, Suite 1200, Seattle, WA 98144-2734.

Amazon.com denies it has appointed Corporation Trust Company at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process. Except as expressly admitted herein, Amazon.com denies each and every allegation of Paragraph 11.

12. Paragraph 12 does not require a response by Amazon.com. To the extent that Paragraph 12 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 12 and therefore denies the same.

13. Paragraph 13 does not require a response by Amazon.com. To the extent that Paragraph 13 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 13 and therefore denies the same.

14. Paragraph 14 does not require a response by Amazon.com. To the extent that Paragraph 14 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 14 and therefore denies the same.

15. Paragraph 15 does not require a response by Amazon.com. To the extent that Paragraph 15 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 15 and therefore denies the same.

16. Paragraph 16 does not require a response by Amazon.com. To the extent that Paragraph 16 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 16 and therefore denies the same.

17. Paragraph 17 does not require a response by Amazon.com. To the extent that Paragraph 17 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 17 and therefore denies the same.

18. Paragraph 18 does not require a response by Amazon.com. To the extent that Paragraph 18 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 18 and therefore denies the same.

19. Amazon.com admits that this action arises under the patent laws of the United States, Title 35 of the United States Code. Amazon.com admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Except as expressly admitted herein, Amazon.com denies each and every allegation of Paragraph 19.

20. Amazon.com does not contest venue in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Amazon.com admits that it offers items for sale on the www.amazon.com website, which can be purchased by customers located around the world, including customers located in this district. Amazon.com denies that it has committed and/or induced acts of patent infringement in this district under any theory. Amazon.com lacks knowledge sufficient to confirm or deny the allegations against the other Defendants and therefore denies the same. Except as expressly admitted herein, Amazon.com denies each and every allegation of Paragraph 20.

21. Amazon.com does not contest personal jurisdiction. Amazon.com denies that it has committed the infringements alleged in the Complaint in Texas or in this judicial district under any theory. Amazon.com lacks knowledge sufficient to confirm or deny the allegations against the other Defendants and therefore denies the same. Except as expressly admitted herein, Amazon.com denies each and every allegation of Paragraph 21.

22. Amazon.com lacks knowledge sufficient to confirm or deny that TQP is the owner by assignment of U.S. Patent No. 5,412,730 (“the ’730 Patent”). Amazon.com admits that the face of the ’730 Patent indicates that it is entitled “Encrypted Data Transmission System

Employing Means for Randomly Altering Encryption Keys.” Amazon.com admits that the face of the ’730 Patent indicates it issued on May 2, 1995. Amazon.com admits that a purported copy of the ’730 Patent is attached to the Complaint as Exhibit A, but Amazon.com lacks knowledge sufficient to confirm or deny it is a true and correct copy. Except as expressly admitted herein, Amazon.com denies each and every allegation of Paragraph 22.

23. Paragraph 23 does not require a response by Amazon.com. To the extent that Paragraph 23 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 23 and therefore denies the same.

24. Paragraph 24 does not require a response by Amazon.com. To the extent that Paragraph 24 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 24 and therefore denies the same.

25. Paragraph 25 does not require a response by Amazon.com. To the extent that Paragraph 25 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 25 and therefore denies the same.

26. Paragraph 26 does not require a response by Amazon.com. To the extent that Paragraph 26 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 26 and therefore denies the same.

27. Paragraph 27 does not require a response by Amazon.com. To the extent that Paragraph 27 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 27 and therefore denies the same.

28. Paragraph 28 does not require a response by Amazon.com. To the extent that Paragraph 28 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 28 and therefore denies the same.

29. Paragraph 29 does not require a response by Amazon.com. To the extent that Paragraph 29 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 29 and therefore denies the same.

30. Paragraph 30 does not require a response by Amazon.com. To the extent that Paragraph 30 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 30 and therefore denies the same.

31. Paragraph 31 does not require a response by Amazon.com. To the extent that Paragraph 31 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 31 and therefore denies the same.

32. Amazon.com denies the allegations made against it in Paragraph 32.

33. Paragraph 33 does not require a response by Amazon.com. To the extent that Paragraph 33 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 33 and therefore denies the same.

34. Paragraph 34 does not require a response by Amazon.com. To the extent that Paragraph 34 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 34 and therefore denies the same.

35. Paragraph 35 does not require a response by Amazon.com. To the extent that Paragraph 35 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 35 and therefore denies the same.

36. Paragraph 36 does not require a response by Amazon.com. To the extent that Paragraph 36 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 36 and therefore denies the same.

37. Paragraph 37 does not require a response by Amazon.com. To the extent that Paragraph 37 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 37 and therefore denies the same.

38. Paragraph 38 does not require a response by Amazon.com. To the extent that Paragraph 38 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 38 and therefore denies the same.

39. Paragraph 39 does not require a response by Amazon.com. To the extent that Paragraph 39 is deemed to require a response, Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 39 and therefore denies the same.

40. Amazon.com lacks knowledge sufficient to confirm or deny the allegations of Paragraph 40 and therefore denies the same.

41. Paragraph 41 does not require a response by Amazon.com. To the extent that Paragraph 41 is deemed to require a response, Amazon.com denies the allegations of Paragraph 41.

42. Amazon.com denies the allegations of Paragraph 42.

43. Amazon.com denies the allegations of Paragraph 43.

44. Amazon.com requests that the Court deny all relief to TQP, including that requested by TQP in its Prayer for Relief.

AFFIRMATIVE DEFENSES

Amazon.com's Affirmative Defenses are listed below. Amazon.com reserves the right to amend its Answer to add additional Affirmative Defenses, including instances of inequitable conduct, consistent with the facts discovered in the case.

FIRST DEFENSE

45. Amazon.com does not infringe and has not infringed any claim of the '730 Patent under any theory (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)).

SECOND DEFENSE

46. The '730 Patent is invalid because the alleged invention fails to satisfy the conditions for patentability specified in 35 U.S.C. § 100 *et seq*, including §§ 101, 102, 103, and 112.

THIRD DEFENSE

47. To the extent that TQP, and alleged predecessors in interest to the '730 Patent, failed to properly mark any of their relevant products as required by 35 U.S.C. § 287 or otherwise give proper notice that Amazon.com's actions allegedly infringed the '730 Patent, Amazon.com is not liable to TQP for the acts alleged to have been performed before it received actual notice that it was allegedly infringing the '730 Patent.

FOURTH DEFENSE

48. To the extent that TQP asserts that Amazon.com indirectly infringes, either by contributory infringement or inducement of infringement, Amazon.com is not liable to TQP for the acts alleged to have been performed before Amazon.com knew that its actions would cause indirect infringement.

FIFTH DEFENSE

49. TQP's attempted enforcement of the '730 Patent against Amazon.com is barred by laches and estoppel.

COUNTERCLAIM

The Parties

50. Counterclaim Plaintiff Amazon.com is a Delaware corporation with its principal place of business at 1200 12th Ave. South, Suite 1200, Seattle, WA 98144-2734.

51. On information and belief based solely on Paragraph 1 of the Complaint as pled by TQP, TQP is a Texas limited liability company with its principal place of business located in Marshall, Texas.

Jurisdiction

52. This counterclaim arises under the patent laws of the United States, Title 35, United States Code. The jurisdiction of this Court is proper under at least 35 U.S.C. § 271 *et seq.* and 28 U.S.C. §§ 1331, 1338, 1367, and 2201-02.

53. Venue is proper in this District pursuant to at least 28 U.S.C. §§ 1391 and 1400. Venue is further proper in the Marshall Division.

Count I

Declaratory Relief Regarding Non-infringement

54. Based on TQP's filing of this action and Amazon.com's First Defense, an actual controversy has arisen and now exists between the parties as to whether Amazon.com infringes the '730 Patent.

55. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, Amazon.com requests a declaration by the Court that it does not infringe any claim of the '730 Patent under any theory (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)).

Count II

Declaratory Relief Regarding Invalidity

56. Based on TQP's filing of this action and Amazon.com's Second Defense, an actual controversy has arisen and now exists between the parties as to the validity of the claims of the '730 Patent.

57. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, and 35 U.S.C. § 100 *et seq.*, Amazon.com requests a declaration by the Court that the claims of the '730 Patent are invalid.

Count III

Declaratory Relief Regarding Unenforceability

58. Based on TQP's filing of this action and Amazon.com's Third, Fourth, and Fifth Defenses, an actual controversy has arisen and now exists between the parties as to the enforceability of the '730 Patent.

59. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, Amazon.com requests a declaration by the Court that the claims of the '730 Patent are unenforceable.

PRAYER

Amazon.com respectfully requests a judgment against TQP as follows:

- A. A declaration that the '730 Patent is unenforceable;
- B. A declaration that the asserted claims of the '730 Patent are invalid;
- C. A declaration that Amazon.com does not infringe, under any theory, any valid claim of the '730 Patent that may be enforceable;
- D. A declaration that TQP take nothing by its Complaint;

- E. Judgment against TQP and in favor of Amazon.com;
- F. Dismissal of the Complaint with prejudice;
- G. An award to Amazon.com of its costs and attorneys' fees incurred in this action;
and
- H. Further relief as the Court may deem just and proper.

JURY DEMAND

Amazon.com hereby demands trial by jury on all issues.

Dated: June 10, 2009

Respectfully submitted,

By: /s/ Jordan T. Fowles

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Attorneys for Defendant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 10, 2009 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Jordan T. Fowles